UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 25 2013

NOTICE OF POTENTIAL LIABILITY, OFFER TO NEGOTIATE FOR REMOVAL ACTION; URGENT LEGAL MATTER – PROMPT REPLY NECESSARY; UNITED PARCEL SERVICE

Randall Jolley
5715 Superior Drive
Morristown, TN 37814-1075

Re: Liberty Fibers Superfund Site (the Site)
4901 Enka Highway, Lowland, TN 37778

Dear Mr. Jolley:

The purpose of this letter is to notify Jolley Rock Investments, LLC (Jolley Rock) of its potential liability as the present owner, as defined by Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended (CERCLA), that Jolley Rock may have incurred with respect to the above-referenced Site. Further, this letter notifies Jolley Rock of forthcoming removal activities at the Site which Jolley Rock is being asked to perform or finance.

The U.S. Environmental Protection Agency has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Site. The EPA has spent, and is considering spending, additional public funds on actions to investigate and/or control such releases or threatened releases at the Site. Unless the EPA reaches an agreement under which a potentially responsible party (PRP) or parties will properly perform or finance such actions, the EPA may perform these actions pursuant to Section 104 of CERCLA.

SITE BACKGROUND

The Site is located at 4901 Enka Highway in Lowland, Tennessee. The Site is a former 350 acre rayon plant producing rayon fibers from wood pulp from 1947 to 2005. The original property housed a waste water treatment facility which discharges to the Nolichucky River, a powerhouse, and numerous other structures, rail lines, and road ways. The facility was operated by a company called BASF until the mid 1990's. Since the mid 1990's, the facility operated as Lenzig Fibers and as Liberty Fibers until declaring bankruptcy. The facility was then purchased by Lowland Industries which operated a metal recycling business at the Site. During this period, several production buildings were demolished resulting in numerous debris piles containing friable asbestos. Currently, the Site contains numerous construction debris piles with large quantities of friable asbestos where salvage, demolition, and renovation operations are being conducted. Access to the Site is largely unsecured, and vandalism and trespassing events have been reported to local law enforcement.

The property in question is a portion of the Site owned by Jolley Rock located at at 4999 Enka Highway, Morristown, Tennessee (Parcel #058 071.02). The Jolley Rock property includes the areal extent of hazardous substances contamination, and all areas in close proximity to the contamination that are necessary for implementation of a removal action. The Jolley Rock property occupies approximately 51 acres and is currently used for industrial and commercial purposes.

A portion of the Jolley Rock property to be addressed was formerly leased to Alumasal. During the course of Alumasal's occupancy, Thermal System Insulation (TSI) was improperly released onto the property as a byproduct of Alumasal's aluminum smelting and scrap metal recovery operations. If not addressed, the TSI may pose an imminent and substantial threat to human health.

THE EPA's RESPONSE ACTION

The EPA has already conducted an emergency response action at the Site under the authority of the Superfund Program. On April 19, 2010 during apparent recycling activities, a debris pile along the southern perimeter caught fire resulting in the Morristown Fire Dept responding. The EPA On-Scene-Coordinator (OSC), determined that a threat to human health and the environment existed and initiated a response action. On April 21, 2010, in order to minimize such future events and the chance of asbestos exposure, the OSC elected to serve the owner with a Notice of Federal Interest in order to initiate Site response activities to contain and mitigate asbestos contamination.

EXPLANATION OF POTENTIAL LIABILITY

PRPs under CERCLA include current and former owners and operators of the Site, as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to the Site. Under Section 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6873 (RCRA), and other laws, PRPs may be obligated to implement response actions deemed necessary by the EPA to protect health, welfare or the environment. PRPs may also be liable for all costs incurred by the United States Government in responding to any release or threatened release at the Site. Such costs include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities. In addition, PRPs may be required to pay for damages for injury to natural resources or for their destruction or loss, together with the cost of assessing such damages.

Based on information received during preliminary investigations of the Site, the EPA believes that Jolley Rock may be a responsible party as the current owner of a portion of the Site as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(2) of CERCLA,42 U.S.C. § 9607(a)(2). Before the United States Government undertakes further response actions, the EPA requests that Jolley Rock voluntarily perform the planned response actions described below pursuant to an Administrative Settlement Agreement and Order on Consent.

FURTHER REMOVAL ACTION REQUIRED

In accordance with Section 104 of CERCLA, the EPA has already handled the emergency aspects of the cleanup necessary at the Site. The EPA intends to continue with the future removal actions at the Site to protect the human health and the environment. The EPA is extending the opportunity to Jolley Rock to conduct the future response actions at the Site and negotiate with the EPA about reimbursing the EPA for a portion of its past response costs for expenditures identified above. The following actions will be implemented by Jolley Rock under an AOC:

a. Develop a Site Health and Safety Plan;
b. Remove all asbestos-containing Thermal System Insulation outside of buildings;

STATEMENT OF WORK AND DRAFT ADMINISTRATIVE ORDER

A copy of the Statement of Work (SOW) and draft Administrative Order on Consent (AOC) are enclosed to assist you in negotiations with the EPA. Work lead by PRPs must be conducted according to a signed AOC and an EPA-approved work plan.

DECISION NOT TO USE SPECIAL NOTICE

Under CERCLA Section 122(e), the EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between the EPA and the PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between the EPA and the PRP or PRPs are conducted. In this case, the EPA has decided not to invoke the Section 122(e) special notice procedures. The EPA's rationale for not invoking Section 122(e) special notice procedures is based on the Agency's removal policy regarding time-critical removals. Nonetheless, the EPA is willing to discuss settlement opportunities without invoking a moratorium, but will issue an order or initiate the response action as planned if such discussions do not lead to settlement expeditiously.

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), the EPA has established an Administrative Record that contains documents that serve as the basis for the EPA's decision on the selection of a response action for the Site. The Administrative Record is available to you and the public for inspection and comment at your local repository located at the Morristown-Hamblen Library, 417 W. Main Street, Morristown, Tennessee 37814. You may also request a copy of the Administrative Record, by contacting the Freedom of Information Act Office at (404) 562-9891 or R4foia@epa.gov.

PRP RESPONSE AND CONTACT

While Jolley Rock and the EPA have been in contact regarding this Site, Jolley Rock is encouraged to contact the EPA in writing within **seven (7) days** of its receipt of this letter to memorialize a willingness to participate in future negotiations at this Site. If the EPA does not receive a response

within **seven (7) days**, the EPA will assume that Jolley Rock does not wish to negotiate a resolution of its liabilities at the Site, and that Jolley Rock has declined to conduct the removal action and to reimburse the Superfund for the Site expenditures. Currently, we are onsite and if the removal work is not started on the Jolley Rock property before we finalized the Site, expenditures for oversight will significantly increase.

Response to this notice letter may be sent by email with a hard copy following to:

Kevin Beswick
Assistant Regional Counsel
U.S. Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, Georgia 30303
Beswick.Kevin@epa.gov

Due to the seriousness of the problem at the Site and the legal ramifications of failure to respond properly, the EPA strongly encourages you to give this matter your immediate attention.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you have any questions regarding the technical aspects of this letter, please contact Karen Buerki, On Scene Coordinator, at (404) 229-9516. If you have any questions regarding legal matters, please contact Kevin Beswick, Regional Counsel, at (404) 562-9580 and for any general questions, please contact Karen Coleman, Enforcement Project Manager, at (404) 562-8853. Thank you for your prompt attention to this matter.

Sincerely,

James Webster, Chief
Emergency Response & Removal Branch
Superfund Division, Region 4
U.S. Environmental Protection Agency

Enclosure (s):

A. Scope of Work (Liberty Fibers Superfund Site: Jolley Rock)
B. Draft Administrative Order on Consent (Liberty Fibers Superfund Site: Jolley Rock)

Enclosure A
SCOPE OF WORK
Jolley Rock Property

1. Remove all asbestos-containing Thermal System Insulation outside of buildings.

2. Dispose of removed asbestos-containing material.

3. Please refer to the Work to be Performed section of the attached Administrative Order on Consent for additional information.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:
Liberty Fibers, Jolley Rock Property,
Morristown, Hamblen County, Tennessee

Jolley Rock Investments, LLC

Respondent

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON CONSENT
FOR REMOVAL ACTION

U.S. EPA Region 4
Docket No. CERCLA-XXXXXXXX

Proceeding Under Sections 104,106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the U. S. Environmental Protection Agency, and Jolley Rock Investments, LLC (Respondent). This Settlement Agreement provides for the performance of the removal action by Respondent and the reimbursement of response costs incurred by the United States in connection with a portion of the former Liberty Fiber Site in Morristown, Hamblen County, Tennessee (the Site).

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, as amended (CERCLA).

3. The EPA has notified the Tennessee Department of Environment and Conservation (TDEC) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. The EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations of Section IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon the EPA, and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

7. Unless noted to the contrary, the terms of this Settlement Agreement shall have the meaning assigned to those terms pursuant to CERCLA or any regulation promulgated under CERCLA. Whenever the terms listed below are used in this Settlement Agreement and Appendices attached hereto, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on April 21, 2010, by the Regional Administrator, EPA Region 4, or his delegate, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et. seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

e. The "EPA" shall mean the U. S. Environmental Protection Agency and any successor departments or agencies of the United States.

f. "Hazardous Substance" shall mean any substance meeting the definition provided in Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14).

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

i. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean the EPA and Respondent.

l. "Respondent" shall mean Jolley Rock Investments, LLC (Jolly Rock).

m. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 32 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation). "Response Costs" shall also include all costs, including but not limited to direct and indirect costs that the United States paid or incurred at or in connection with the Site through the effective date of this Settlement Agreement, plus interest on all such costs through such date.

n. "Section" shall mean a portion of this Settlement Agreement identified by a roman numeral.

o. "Site" shall mean that portion of the former Liberty Fibers facility, in Morristown, Hamblen County Tennessee, owned by Jolley Rock. Notwithstanding the Site boundaries, the Site includes the areal extent of hazardous substances contamination, and all areas in close proximity to the contamination that are necessary for implementation of the Work.

p. "State" shall mean the State of Tennessee as represented by TDEC.

q. "TDEC" shall mean the Tennessee Department of Environment and Conservation.

r. "Waste Material" shall mean: 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

s. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

For the purposes of this Settlement Agreement, the EPA finds that:

8. The Site is comprised of approximately 51 acres in Morristown, Tennessee.

9. The current street address of the property is 4999 Enka Highway, Morristown, TN.

10. General land use within the Site currently is industrial and commercial.

11. The property in question is a portion of the property owned by Jolley Rock at the former Liberty Fibers Site, and sold to Alumasal.

12. Alumasal leased the property for use as a secondary aluminum smelter and scrap metal yard.

13. It is believed that Alumasal engaged in recovery of scrap metal and piping in the building they occupied at the Site. The piping was covered in Thermal System Insulation (TSI) that contains asbestos. This TSI was improperly handled, and has been released into the environment.

14. The TSI release at the Alumasal property, if not addressed by implementation of the Work pursuant to this Settlement Agreement, may pose an imminent and substantial threat to the users of the Site (see Action Memorandum, Appendix A).

V. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, the EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent Jolley Rock, sold the property to Alumasal. Alumasal has not paid on the note, and Jolley Rock, has retaken possession of the property. Jolley Rock is the present "owner" of the Site as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the Site as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment, and if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

16. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all attachments to this Settlement Agreement, and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

17. Respondent shall retain one or more contractors to perform the Work and shall notify the EPA of the name(s) and qualifications of such contractor(s) within fourteen (14) days of the Effective Date. Respondent shall also notify the EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least fourteen (14) days prior to commencement of such Work. The EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If the EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify the EPA of that contractor's name and qualifications within fourteen

(14) days of the EPA's disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by the EPA.

18. Within fourteen (14) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to the EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be readily available during Site work. The EPA retains the right to disapprove of the designated Project Coordinator. If the EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify the EPA of that person's name, address, telephone number, and qualifications within fourteen (14) days following the EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from the EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

19. The EPA has designated Karen Buerki of the EPA Region 4 Emergency Response and Removal Branch as its On-Scene Coordinator (OSC). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 61 Forsyth St., S.W., Atlanta, Georgia 30303.

20. The EPA and Respondent shall have the right, subject to the immediately preceding paragraphs, to change their designated OSC, RPM, or Project Coordinator. Respondent shall notify the EPA, fourteen (14) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

21. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum. The actions to be implemented generally include but are not limited to, the following:

22. Work Plan and Implementation

a. Within twenty-one (21) days after the Effective Date, Respondent shall submit to the EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 21 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. A Quality Assurance Project Plan (QAPP) was previously prepared for this site as provided in the *Site Delineation Work Plan* (ARCADIS, November 2011, revised December 2011). The QAPP was prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002).

b. The EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If the EPA requires revisions, Respondent shall submit a revised draft Work Plan

within twenty (20) days of receipt of the EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by the EPA in accordance with the schedule approved by the EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 22(b).

d. Jolley Rock and its contractors will be permitted access to the on-site landfill constructed by the EPA, and will be allowed to use the landfill to dispose of ACM removed from the Jolly Rock property under the direction of the OSC.

23. Health and Safety Plan. Respondent shall submit for the EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement in accordance with the schedule in the Work Plan. This plan shall be prepared in accordance with the EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If the EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by the EPA and shall implement the plan during the pendency of the removal action.

24. Quality Assurance and Sampling

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to the EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," and the U.S. EPA Region 4 Standard Operating Procedures and Quality Assurance Manual (May 1996), or equivalent documentation as determined by the EPA. The EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

b. Upon request by the EPA, Respondent shall have such a laboratory analyze samples submitted by the EPA for QA monitoring. Respondent shall provide to the EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by the EPA, Respondent shall allow the EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify the EPA not less than ten (10) days in advance of any sample collection activity, unless shorter notice is agreed to by the EPA. The EPA shall have the right to take any additional samples that the EPA deems necessary. Upon request, the EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

25. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by the EPA, Respondent shall submit a proposal for post-removal Site control consistent with Section 300.415(k) of the NCP and OSWER Directive 9360.2-02. Upon the EPA's approval, Respondent shall implement such controls and shall provide the EPA with documentation of all post-removal Site control arrangements.

26. Reporting

a. Respondent shall submit a written progress report to the EPA concerning actions undertaken pursuant to this Settlement Agreement every seventh (7th) day after the date of receipt of the EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by the EPA, Respondent shall submit such documents in electronic form.

27. Final Report. Within sixty (60) days after completion of all removal actions required under this Settlement Agreement, the Respondent shall submit for the EPA's review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

28. Off-Site Shipments

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 28(a) and 28(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondent shall obtain the EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

29. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify the EPA if after using its best efforts it is unable to obtain such agreements.

30. If the EPA determines that to implement this Settlement Agreement, land and/or water use restrictions are needed on property owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons an agreement, enforceable by Respondent, the EPA, and TDEC, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the removal measures to be performed pursuant to this Settlement Agreement.

31. If directed by the EPA, Respondent shall execute and record the easement, or land/water use restrictions in the New Hanover County land records office, as an easement, running with the land, that grants the right to enforce the land/ water use restrictions, or other restrictions that the EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the removal measures to be performed pursuant to this Settlement Agreement. The rights to enforce land/water use restrictions shall be granted to (i) the EPA, and its representatives, (ii) the State and its representatives, and/or (iii) other appropriate grantees.

32. If any access or land/water use restriction agreements are not obtained within 45 days of the date of the EPA's request for such a restriction, Respondent shall promptly notify the EPA in writing, and shall include in that notification a summary of the steps that Respondent has taken to attempt to comply with this Settlement Agreement. The EPA may, as it deems appropriate, assist Respondent in obtaining land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Respondent shall reimburse the EPA in accordance with the procedures in Section XV (Payment of Response Costs), for all costs incurred, direct or indirect, by the EPA in obtaining such land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

33. Notwithstanding any provision of this Settlement Agreement, the EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

34. Respondent shall provide to the EPA, and TDEC, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to the EPA, and TDEC, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

35. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to the EPA and TDEC under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by the EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to the EPA, and TDEC, or if the EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

36. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts

such a privilege in lieu of providing documents, it shall provide the EPA and TDEC with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated as required by this Settlement Agreement shall be withheld on the grounds that they are privileged.

37. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

38. Until 10 years after Respondent's receipt of the EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of the EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

39. At the conclusion of this document retention period, Respondent shall notify the EPA, and TDEC, at least 90 days prior to the destruction of any such records or documents, and, upon request by the EPA, or TDEC, Respondent shall deliver any such records or documents to the EPA or TDEC. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide the EPA or TDEC with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated as required by this Settlement Agreement shall be withheld on the grounds that they are privileged.

40. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

41. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by the EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to the EPA's approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION RELEASES

42. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC at 404-562-8796 or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response and Removal Branch, EPA Region 4 at 404-562-8700 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and the EPA takes such action instead, Respondent shall reimburse the EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

43. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 404-562-8747 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to the EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

XIV. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

44. The OSC shall be responsible for overseeing the Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

45. Payments for Response Costs

a. Respondent shall pay the EPA's Response Costs not inconsistent with the NCP. On a periodic basis, the EPA will send Respondent a bill requiring payment that includes a cost summary. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 47 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and EPA Site/Spill Number A4J3. Respondent shall send the check(s) to:

U. S. Environmental Protection Agency
Superfund Payments-Region 4
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

c. At the time of payment, Respondent shall send notice that payment has been made to Karen Buerki and Ms. Paula Painter, U.S. EPA Region 4, 61 Forsyth St., S.W., Atlanta, GA 30303.

d. The total amount to be paid by Respondent pursuant to Paragraph 45(a) shall be deposited in the EPA Hazardous Substance Superfund.

46. In the event that the payments for Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

47. Respondent may dispute all or part of a bill for Response Costs submitted under this Settlement Agreement, if Respondent alleges that the EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to the EPA as specified in Paragraph 45 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 45(c) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within ten (10) days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

49. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, it shall notify the EPA in writing of the objection within ten (10) days of such action, unless the objection has been resolved informally. The EPA and Respondent shall have ten (10) days from the EPA's receipt of Respondent's written objection to resolve the dispute through formal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of the EPA.

50. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the EPA Superfund Division Director will issue a written decision on the dispute to Respondent. The EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

51. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. For purposes of this Settlement Agreement, a force majeure is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, or increased cost of performance, or a failure to attain performance standards/action levels set forth in the Action Memorandum.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondent shall notify the EPA orally within forty-eight (48) hours of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to the EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting

any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

53. If the EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure event will be extended by the EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If the EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify Respondent in writing of its decision. If the EPA agrees that the delay is attributable to a force majeure event, the EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XVIII. STIPULATED PENALTIES

54. Respondent shall be liable to the EPA for stipulated penalties in the amounts set forth in Paragraph 55 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by the EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

55. Stipulated Penalty Amounts. For each day, or portion thereof, that Respondent fails to perform, fully, any requirement of this Settlement Agreement in accordance with the schedule established pursuant to this Settlement Agreement after receipt of written notice from the EPA of such non-compliance, Respondent shall be liable as follows:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$250
15th through 30th day	$500
31th day and beyond	$750

56. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after the EPA's receipt of such submission until the date that the EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Region 4 Superfund Division Director, under Paragraph 50 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Superfund Division Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

57. Following the EPA's determination that Respondent failed to comply with a requirement of this Settlement Agreement, the EPA may give Respondent written notification of the failure and describe the noncompliance. The EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the EPA has notified Respondent of a violation.

58. All penalties accruing under this Section shall be due and payable to the EPA within 30 days of Respondent's receipt from the EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to the EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Superfund, U.S. EPA, Region 4, Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384, Attn: Collection Officer for Superfund, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A4J3, the EPA Docket Number CERCLA-04-2013- , and the name and address of the party making payment. Copies of check paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the EPA as provided in Paragraph 19, and to Paula Painter, U.S. EPA Region 4, 61 Forsyth St., SW, Atlanta, GA, 30303.

59. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

60. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of the EPA's decision.

61. If Respondent fails to pay stipulated penalties when due, the EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 57. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that the EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY THE EPA

62. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Response Costs. This covenant not to sue shall take effect upon receipt by the EPA of the Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated

Penalties due for failure to pay Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent, its affiliates, subsidiaries and successors, and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY THE EPA

63. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of the EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent the EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

64. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. The EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

65. Work Takeover. In the event the EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, the EPA may assume the performance of all or any portion of the Work as the EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute the EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response

Costs). Notwithstanding any other provision of this Settlement Agreement, the EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

66. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tennessee Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 62, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 64(b), (c), and (e)–(g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

67. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

68. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if the EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

XXII. OTHER CLAIMS

69. By issuance of this Settlement Agreement, the United States and the EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or the EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

70. Except as expressly provided in Section XIX and Section XXI, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

71. No action or decision by the EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

72. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C.§ 9613(f)(2), and that Respondent, its affiliates, subsidiaries and successors are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs. Except as provided in Section XXI, nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

73. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent, its affiliates, subsidiaries and successors have, as of the Effective Date, resolved their liability to the United States for the Work and Future Response Costs.

74. Except as provided in Section XXI, Paragraph 68 of this Settlement Agreement, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)–(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

75. The Parties agree that Respondent, its affiliates, subsidiaries and successors are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and

122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs. Except as provided in Section XXI, nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

76. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

77. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

78. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

79. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one (1) million dollars, combined single limit. Within the same time period, Respondent shall provide the EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to the EPA that any contractor or

subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

80. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of the EPA in the amount of $500,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of the EPA, issued by financial institution(s) acceptable in all respects to the EPA;

c. a trust fund administered by a trustee acceptable in all respects to the EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to the EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

81. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to the EPA, determined in the EPA's sole discretion. In the event that the EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of the EPA's determination, obtain and present to the EPA for approval one of the other forms of financial assurance listed in Paragraph 72, above. In addition, if at any time the EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to the EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

82. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 80(e) or 80(f) of this Settlement Agreement, Respondents shall (i) demonstrate to the EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by the EPA, to the EPA. For the

purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of $500,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to the EPA by means of passing a financial test.

83. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 80 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to the EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from the EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondents may reduce the amount of security in accordance with the EPA's written decision resolving the dispute.

84. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by the EPA, provided that the EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

85. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by the EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

86. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to the EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 80.

XXIX. NOTICE OF COMPLETION OF WORK

87. When the EPA determines, after the EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, the EPA will provide written notice to Respondent. If the EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, the EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXX. SEVERABILITY/INTEGRATION/APPENDICES

88. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

89. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: (A) Action Memorandum.

XXXI. EFFECTIVE DATE

90. This Settlement Agreement shall be effective seven (7) days after the Settlement Agreement is signed by the EPA.

The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

Agreed this day of , 2013.

For Respondent _____

By

Title

It is so ORDERED and Agreed this day of , 2013.

BY: _____ DATE:_____

James Webster, Chief
Emergency Response and Removal Branch
Region 4
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

WOOLF · McCLANE

WOOLF, McCLANE, BRIGHT, ALLEN & CARPENTER, PLLC

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M. AARON SPENCER
ROBERT L. VANCE
LOUIS C. WOOLF (RETIRED)

October 2, 2013

Kevin Beswick, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, GA 30303

Via E-Mail: Beswick.Kevin@epa.gov
& U.S. Mail

Re: Liberty Fibers Superfund Site
4901 Enka Highway, Lowland, TN 37778
EPA Notice of Potential Liability – Offer to Negotiate for Removal Action

Dear Mr. Beswick:

My name is Bob Vance, and I represent Jolley Rock, LLC regarding several issues concerning the above-referenced site. I recently received the Notice of Potential Liability, Offer to Negotiate for Removal Action dated September 25, 2013, and am in the process of reviewing the document and attachments. I note that your office has requested a response from my client as to whether it is willing to participate in future negotiations regarding the site and am writing to advise that my client is willing, without waiving any of its rights, to participate in such negotiations.

I would appreciate your forwarding future correspondence regarding this matter to my attention, and I look forward to working with you on this matter.

Sincerely,

Robert L. Vance

RLV:dw

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